Supreme Court, U.S.
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No. ____

In The

Supreme Court of the United States

HILTON P. BOWEN,

Petitioner,

v.

THE UNITED STATES OF AMERICA,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

HILTON P. BOWEN, PRO SE
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QUESTIONS PRESENTED

1. Whether the Ninth Circuit Court should have affirmed the District Court's failure to rule on the admissibility of an Exhibit, objected to by Respondent and Petitioner as another person's return information and privileged under I.R.C. § 6103 and O'Connor v. U.S., 698 F. Supp. 204 (D. Nev. 1988); Laxalt v. McClatchy, Misc. No. 86-0051 (D. D.C. filed March 12, 1987); Conn v U.S., Case No. C-91-20192-JW(PVT, unpublished order dated December 10, 1991) and time barred Petitioner 26 U.S.C. 7431 action.

2. Whether the Internal Revenue Service acting under the color of law and selecting a page of their I.R.C. § 6103-privileged report to replace their own witness's Exhibits with the questionable Exhibit, violating their own disclosure laws, and claiming an earlier, accrual date filed an Affidavit Made In Bad Faith or violated the Petitioner's civil rights.

PARTIES TO THE PROCEEDINGS

All parties to the proceedings in the United States Court of Appeals for the Ninth Circuit appear in the caption to this Petition. Pursuant to 26 U.S.C. § 7431 the United States of America is the Respondent for its agency, Internal Revenue Service.

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PETITION FOR WRIT OF CERTIORARI

Hilton P. Bowen respectfully petitions for a writ of certiorari to review the Order of the United States Court of Appeals for the Ninth Circuit entered on April 28, 1999 in this case.

CITATIONS TO OPINIONS BELOW

The decision of the United States Court of Appeals for the Ninth Circuit is unpublished and appears in the Appendix of this petition at pages App. 1-3. The decision of the United States District Court for the Southern District of California is unpublished and appears in the Appendix of this petition at pages App. 4-6.

JURISDICTION

Memorandum of the United States Court of Appeals for the Ninth Circuit was entered on January 21, 1999 and an Order entered on April 28, 1999. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Internal Revenue Code under 26 U.S.C. § 7431(a).

Internal Revenue Code under 26 U.S.C. § 6103.

Internal Revenue Code under 26 U.S.C. § 7431(d).

Pursuant to Supreme Court Rule 14(f) the texts of these statutes are set forth, infra, at App. 00-02.

STATEMENT OF THE CASE

Hilton P. Bowen, hereafter Petitioner, filed an action pro se in the district court seeking damages for wrongful disclosure of tax return information under 26 U.S.C. § 7431. United States of America, hereafter Respondent, raised the issue of statutes of limitation under 26 U.S.C. § 7431(d) and filed a motion for summary judgement.

Respondent claimed the statute of limitation for filing federal court action expired before October 29, 1997. A declaration of an Internal Revenue Service employee was attached in support of the claim. An exhibit of one page was attached to the filed motion. Petitioner filed a Statement of Genuine Issue indicating that the Internal Revenue Service has never informed him of any unauthorized disclosure between their employees and his employer, State of Maryland. Petitioner provided documents stating that it was impossible for any accrual date, before November 1, 1995. The exhibit filed by Respondent and used by the Trial Court is a note made concerning a tax levy erroneously sent to Petitioner's employer claiming that the employer did not make trust payments with a November 9, 1995-message typed into the other notes.

The United States Attorneys and the Internal Revenue Service District Director's attorneys removed their witness's exhibits (telephone logs) and replaced the exhibit with one page from an investigation of another

Internal Revenue Service employee unlawful disclosure. Respondent claimed privilege for two numbered reports and all of the so called tax return information of their employee. The Statement of Genuine Issue informed Respondent that Petitioner had copies of the document they removed from their witness's declaration and the Court's use. Respondent tried to get their witness excused at pretrial and replace her with Petitioner's supervisor that knew nothing about dates or facts in this case. Respondent's witness testified that the exhibit attached to the motion for summary judgement was not a copy of her exhibits attached to her declaration.

. What has spawned here is Respondent replaced an exhibit that clearly shows dates of November 9, 1995 and other dates later than October 29, 1995. The exhibit filed states at the bottom "(No date 1:10), Called Alma and advised her of advisor's actions & that we had a disclosure problem that we would have to take care of separately. s/Mr. Tre (not clear)". Therefore, this document is one page of the investigation of the government employee. The two page telephone logs submitted by the Petitioner indicate that Bowen knew of the unauthorized disclosure on November 9, 1995. The Petitioner's exhibit of the same telephone log clearly shows that the note relied upon by the Trial Court was typed on November 9, 1995. A reading of the text makes this point very clear.

This scheme was hatched between the government offices between November 20, 1997 and December 1, 1997. The District Director's office wrote a carefully worded letter denying Petitioner's claim, on December 31, 1997. The claim was being considered until after the

actual, accrual statute date, November 1, 1997. The Internal Revenue Service has a pubic duty not to keep information from the Court by using their disclosure laws or replacing documents.

The aforementioned facts have been addressed to the Court in pretrial briefs, pretrial hearings, objections, written motions, and at appeals. The District Court refused to rule on the motions, did not allow Petitioner to finish his opening statement instead required him to finish as a witness, refused to allow him the right to finish cross-examining the one witness, and gave her decision without allowing a defense, over the objections of the Petitioner.

REASON FOR GRANTING THE WRIT

The District Court did not understand the difference between the changed exhibits and the exhibit offer with the Statement of Genuine Issue nor the time limitations in 26 U.S.C. § 7431(d), did not rule on motions to strike the government motion because of the changed exhibits. The petitioner was not allowed to defend the government charges in District Court. The Petitioner was required to finish his opening statement as a witness and be crossed by the Respondent before their case was presented. The trial was held during a recess of another "large" trial. The Ninth Circuit court did not find clear error or grant a rehearing. Petition for Rehearing included the transcript of the pretrial hearing April 27, 1998 making it clear that this Petitioner did not receive the same trial without an attorney as he would have otherwise.

The Internal Revenue Service has never informed Petitioner of any disclosure as described in 26 U.S.C. § 7431(a) and time barred in 26 U.S.C. § 7431(d). Respondent in their attempt to deny this Petitioner's claim and Court action, filed a declaration in bad faith to mislead the court concerning the accrual date of this action. Attempted to keep actual documents from the court. Petitioner was able to obtained the actual pages in question under the Freedom of Information Act before filing his claim or the Court would have never seen the actual documents. United States of America and their agencies have tried with all of their power to destroy this Petitioner contract employment.

CONCLUSION

The petition for a writ of certiorari should be granted.

Dated this 24th day of August, 1999.

Respectfully submitted,

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

HILTON P. BOWEN, Plaintiff-Appellant, v. UNITED STATES OF AMERICA, Defendant-Appellee.	No. 98-56378 DC# CV-97-09153-CAS-JGx Central California ORDER (Filed Apr. 28, 1999)

Before: BEEZER, KLEINFELD and HAWKINS, Circuit Judges

Appellant's motion to file reporter's transcripts in support of his petition for rehearing is granted.

The panel has voted to deny appellant's petition for panel rehearing.

No further filings shall be accepted in this closed appeal.

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

HILTON P. BOWEN, Plaintiff-Appellant, v. UNITED STATES OF AMERICA, Defendant-Appellee.	No. 98-56378 DC# CV-97-09153-CAS-JGx MEMORANDUM[1] (Filed Jan. 21, 1999)

Appeal from the United States District Court
for the Central District of California
Christina A. Snyder, District Judge, Presiding

Submitted January 19, 1999[2]

Before: BEEZER, KLEINFELD, and HAWKINS, Circuit Judges.

Hilton P. Bowen appeals pro se the district court's judgment in favor of the United States in his action seeking damages for wrongful disclosure of tax return information under 26 U.S.C. § 7431. We affirm.

Bowen contends that the district court erred in ruling that his action was time-barred. The statute of limitations

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[1] This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as may be provided by 9th Cir. R. 36-3.

[2] The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a).

for the unauthorized disclosure of tax information is two years. *See* 26 U.S.C. § 7431(d). The district court did not clearly err in finding that Bowen learned of the disclosure no later than October 27, 1995, more than two years before he filed his complaint. *See Bartleson v. United States*, 96 F.3d 1270, 1274 (9th Cir. 1996). Accordingly, we affirm the district court's judgment.[3]

AFFIRMED.

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[3] We have examined Bowen's remaining contentions and conclude that they lack merit.

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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

HILTON B. BOWEN, Plaintiff(s), v. UNITED STATES OF AMERICA, Defendant.	Case No. CV-97-9153-CAS(JGx) **[~~PROPOSED~~] JUDGMENT DISMISSING THE FIRST AMENDED COMPLAINT WITH PREJUDICE; ORDER THEREON** TRIAL: Date: May 15, 1998 Time: 10:00 a.m. Court: 11 Address: 312 No. Spring St. Los Angeles, CA (Filed May 27, 1998)

The trial on the bifurcated issue of whether plaintiff filed his claim within the applicable statute of limitations took place at the date and time set forth above. Pursuant to the evidence and testimony submitted at trial, the Court finds the following:

1. 26 U.S.C. § 7431(d) provides that actions for alleged unauthorized disclosure of returns and return information must be brought within "2 years after the date of the discovery by the plaintiff of the unauthorized disclosure." 26 U.S.C. § 7431(d). *Amcor Capital Corp. v. United States of America*, 95-2 U.S.T.C. ¶ 50,395 (C.D. Cal. 1995), *aff'd*, 1997 U.S. App. LEXIS 725 (1997), *cert. denied*, No. 96-1661 (1997).

2. The evidence establishes that the plaintiff knew about the disclosure by October 27, 1995. *Cline v. Brusset*, 661 F.2d 108, 110 (9th Cir. 1981); *Compton v. Ide*, 732 F.2d 1429, 1432 (9th Cir. 1984); *Bagley v. CMC Real Estate Corp.*, 923 F.2d 758, 760 (9th Cir. 1991). Plaintiff had until October 27, 1997 to filed [sic] his Complaint, but failed to due [sic] so.

3. The plaintiff filed his complaint on October 29, 1997, two days after the two-year statute of limitations had expired.

4. Plaintiff's complaint is dismissed with prejudice for lack of jurisdiction.

IT IS SO ORDERED.

Dated: MAY 27 1998

CHRISTINA A. SNYDER
CHRISTINA A. SNYDER
United States District Judge

Presented by:

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United States Attorney
EDWARD M. ROBBINS, Jr.
Assistant United States Attorney
Chief, Tax Division

/s/ Benjamin R. Duncan
BENJAMIN R. DUNCAN
Assistant United States Attorney

STATUTORY PROVISIONS INVOLVED

Section § 7431 of the Internal Revenue Code, provides as follows:

(a) In general

(1) Inspection or disclosure by employee of United States

If any officer or employee of the United States by reason of negligence, inspects or discloses any return or return information with respect to a taxpayer in violation of any provision of section 6103, such taxpayer may bring a civil action for damages against the United States in a district court of the United States.

(2) Inspection or disclosure by a person who is not an employee of the United States

(3) If any person who is not an officer or employee of the United States knowingly, or by reason of negligence, inspects or discloses any return or return information with respect to a taxpayer in violation of any provision of section 6103, such taxpayer may bring a civil action for damages against such person in a district court of the United States.

Section § 6103 of the Internal Revenue Code, provides as follows:

(a) General rule

Return and return information shall be confidential, and except as authorized by this title –

(1) no officer or employee of the United States,

(2) no officer or employee of any State, any local child support enforcement agency, or any

local agency administering a program listed in subsection (1)(7)(D) who has or had access to returns or return information ~~under~~ this section, and

(3) no other person (or officer or employee thereof) who has or had access to return or return information under subsection(e)(1)(D)(iii), paragraph (6), (12), or (16) of subsection (1) paragraph (2) or (4)(B) of subsection (m), or subsection (n), shall disclose any return or return information obtained by him in any manner in connection with his in manner in connection with his service as such an officer or any employee or otherwise or under the provisions of this section. For purposes of this subsection, the term "officer or employee" includes a former officer or employee.

Section § 7431 of the Internal Revenue Code, provides as follows:

(d) Period for bringing action

Not withstanding any other provision of law, an action to enforce any liability created under this section may be brought, without regard to the amount in controversy, at any time within 2 years after the date of discovery by the plaintiff of the unauthorized inspection or disclosure.

(e) Notification of unlawful inspection and disclosure

If any person is criminally charged by indictment or information with inspection or disclosure of a taxpayer's return or return information in violation of

(1) paragraph (1) or (2) of section 7213(a),

(2) section 7213A(a), or

(3) subparagraph (B) of section 1030(a) of title 18, United States Code, the Secretary shall notify such taxpayer as soon as practicable of such inspection or disclosure.